

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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DAVID FITZGERALD,	:
	:
Plaintiff,	:
	:
16 Civ.	:
– against –	:
	:
ETSY, INC.,	:
	:
	:
Defendant.	:
	:
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Plaintiff, David Fitzgerald, by and through his attorney, Corey Stark PLLC, complains of Defendant and respectfully sets forth to this Court as follows:

**NATURE OF THE ACTION**

1. This is an action to recover damages for Defendant's discrimination on the basis of age in the terms, conditions, and privileges of employment under the Age Discrimination in Employment Act, 29 U.S.C. §621, *et seq.* ("ADEA"), gender in the terms, conditions and privileges of employment under Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. §2000e, *et seq.* ("Title VII"), age and gender in the terms, conditions, and privileges of employment under the New York Executive Law §290, *et seq.* ("NYSHRL"), and age and gender in the terms, conditions, and privileges of employment under the Administrative Code of the City of New York §8-801, *et seq.* ("NYCHRL"). This is also an action to recover damages for illegal retaliation.

**JURISDICTION**

2. The Court has jurisdiction over this action pursuant to 28 U.S.C. §1331, 28 U.S.C. §1343(4), and 28 U.S.C. §1367.

### **VENUE**

3. Venue is proper in the Eastern District of New York, pursuant to 28 U.S.C. §1391, because the Eastern District of New York is the judicial district in the state in which the unlawful employment practices are alleged to have been committed.

### **PREREQUISITES**

4. Plaintiff filed a Charge of Discrimination with the United States Equal Employment Opportunity Commission (“EEOC”), which was accepted for filing and investigation.

5. On May 31, 2016, the EEOC issued a Notice of Right to Sue (“Right-to-sue Letter”) which permitted Plaintiff to file a civil action within 90 days of Plaintiff’s receipt of the Right-to-sue Letter.

6. Plaintiff commenced this action within 90 days of his receipt of the Right-to-sue Letter.

7. Before filing the complaint in this action, Plaintiff caused a copy of the same to be served upon the Corporation Counsel of the City of New York and the New York City Commission on Human Rights.

### **PARTIES**

8. Plaintiff, David Fitzgerald (“Plaintiff”), is male and his date of birth is June 2, 1972.

9. At all times hereinafter mentioned, Plaintiff was a resident of the State of New York.

10. At all times material herein, Plaintiff was an “Employee” entitled to protection with the meaning of the ADEA, Title VII, the NYSHRL, and the NYCHRL.

11. Defendant, Etsy, Inc. (“Etsy”), is a foreign corporation with its principal office located at 117 Adams Street in Brooklyn, within the County of Kings and the State of New York.

12. Upon information and belief, Etsy was and still is an online marketplace for handmade or vintage items and supplies, as well as unique factory-manufactured items.

13. Etsy is an “Employer” within the meaning of the ADEA, Title VII, the NYSHRL, and the NYCHRL.

14. This action arises out of Etsy’s wrongful, illegal, and tortious conduct within the State of New York.

### **BACKGROUND**

15. Plaintiff earned a Bachelor of Arts degree in Communications and Journalism from Rutgers University.

16. Plaintiff has had a well-established career as a corporate/executive recruiter for more than a decade.

17. On April 8, 2014, Plaintiff commenced his employment by Etsy with the title or position of Senior Corporate Recruiter.

18. For the majority of his employment by Etsy, Plaintiff reported to a male Senior Director who is nearly 40 years old.

19. Plaintiff has successfully recruited talent for Etsy’s finance, legal, marketing, and research departments.

20. Although Etsy did not engage in a practice of providing its employees with annual written performance appraisals, Plaintiff’s supervisor consistently commended him on his work performance.

21. Indeed, Plaintiff received an “Etsy Value Award,” which is Etsy’s method of recognizing excellent work performance.

22. At all times during the course of his employment by Etsy and up to the last day of his employment, Plaintiff performed his services competently, faithfully, diligently, and in an outstanding manner.

23. At all times relevant herein, Plaintiff was the oldest Recruiter that Etsy employed.

24. Despite Plaintiff’s excellent work performance and experience, Etsy promoted a younger, less qualified, female employee to the position of Manager instead of Plaintiff.

25. Upon information and belief, Etsy has also engaged in a practice of replacing many of its management-level employees with younger and less qualified female employees.

26. Despite Plaintiff’s excellent performance record, Etsy placed Plaintiff on a 30-day performance improvement plan (the “PIP”).

27. The PIP described some alleged performance deficiencies including improving communications with a younger, female member of Etsy’s Human Resources Department who has a poor performance record.

28. While the PIP was pending, this younger, female member of the Human Resources Department canceled all meetings that Plaintiff had scheduled for purposes of communicating with her.

29. Although Plaintiff achieved all benchmarks from the PIP, on February 26, 2016, Etsy terminated Plaintiff’s employment without cause.

30. Upon information and belief, Plaintiff’s age was the motivating factor in Etsy’s decision to terminate Plaintiff’s employment.



31. Upon information and belief, Etsy has replaced Plaintiff with a younger, less qualified, female employee.

32. Upon information and belief, Etsy engages in the practice of terminating skilled, high-performing, male employees in order to make room for additional female employees. This is particularly true in Plaintiff's business functions group, which is now comprised of more than 75% females.

**HOSTILE WORK ENVIRONMENT & DISPARATE TREATMENT**

33. During Plaintiff's employment, Etsy created, promoted, and maintained a pervasively hostile work environment and atmosphere.

34. Various management-level employees were well aware of Plaintiff's age and gender.

35. Plaintiff was singled out for harassment based upon his age and gender.

36. Etsy treated Plaintiff differently than similarly situated younger, female employees based upon his age and gender. The age and gender-related harassment and disparate treatment included, without limitation, the following:

- (a) promoting Plaintiff's younger, female comparators even after the younger, female comparators had made significant errors;
- (b) condemning Plaintiff for making an insignificant error while at the same time excusing multiple errors made by a younger, female employee;
- (c) reassigning Plaintiff's work to younger, female employees;
- (d) failing to evaluate Plaintiff work performance before putting him on the PIP;
- (e) hyper-supervising Plaintiff's work;
- (f) refusing to meet with Plaintiff;

(g) allowing younger, female employees a much longer opportunity to address alleged performance deficiencies through a performance improvement plan; and

(h) fabricating proof that Plaintiff had performance problems after it was exposed that Plaintiff had, on the contrary, a *sterling* performance record.

37. Plaintiff issued complaints concerning some of the foregoing conduct.

38. Etsy fostered the pervasively hostile work environment by failing to take action to remedy the situation.

39. The campaign of harassment and disparate treatment continued until February 26, 2016, when Etsy terminated Plaintiff's employment without cause.

40. The reason given for Plaintiff's termination was Plaintiff's purported performance deficiencies.

41. Upon information and belief, Etsy's reason for terminating Plaintiff's employment was a pretext for discrimination, and Plaintiff's age and gender were the true reasons for Etsy's decision to terminate Plaintiff's employment.

### **RETALIATION**

42. Upon information and belief, at all times material herein Etsy had a policy prohibiting discrimination/harassment in the workplace.

43. On February 11, 2016, Plaintiff issued a written complaint of age and gender discrimination.

44. Etsy failed to investigate or address Plaintiff's discrimination complaint.

45. After Plaintiff issued the discrimination complaint, the discrimination and harassment that he was subjected to only intensified.

46. For example, after Plaintiff had issued his discrimination complaint, Etsy stopped assigning him requisitions for new hires, allegedly restructured its work assignment system to rob Plaintiff of work assignments and transfer them to younger employees, and posted an advertisement for Plaintiff's job.

47. On February 26, 2016, Etsy addressed Plaintiff's discrimination complaint by terminating Plaintiff's employment without cause.

48. Plaintiff's discrimination complaint was the motivating factor in Etsy's decision to terminate Plaintiff's employment.

**AS AND FOR A FIRST COUNT**

49. Plaintiff repeats and realleges each and every allegation contained in paragraphs of the Complaint numbered "1" through "48" inclusive with the same force and effect as if fully set forth at length herein.

50. Etsy unlawfully discriminated against Plaintiff with respect to the terms and conditions of his employment because of his age. By reason thereof, Etsy has violated the ADEA.

51. As a direct and proximate result of Etsy's unlawful discriminatory practices as described herein, Plaintiff was humiliated and embarrassed within the work atmosphere, which was brought about by virtue of Etsy's systematic and continuous unlawful harassment and multiple discriminatory practices and acts.

52. As a direct and proximate result of Etsy's discriminatory practices, Plaintiff has also sustained significant economic damages.

**AS AND FOR A SECOND COUNT**

53. Plaintiff repeats and realleges each and every allegation contained in paragraphs of the Complaint numbered "1" through "48" inclusive with the same force and effect as if fully set forth at length herein.

54. Etsy unlawfully discriminated against Plaintiff with respect to the terms and conditions of his employment because of his gender. By reason thereof, Etsy violated Title VII.

55. By virtue of the acts complained of herein, the hostile work environment at Etsy was sufficiently severe and pervasive to alter the terms and conditions of Plaintiff's employment and create a subjectively and objectively abusive/discriminatory work environment. By reason thereof, Etsy violated Title VII.

56. As a direct and proximate result of Etsy's unlawful discriminatory practices as described herein, Plaintiff was humiliated and embarrassed within the work atmosphere, which was brought about by virtue of the Etsy's systematic and continuous unlawful harassment and multiple discriminatory practices and acts.

57. As a direct and proximate result of Etsy's discriminatory practices, Plaintiff has sustained substantial damages, the amount of which is to be determined by a jury.

**AS AND FOR A THIRD COUNT**

58. Plaintiff repeats and realleges each and every allegation contained in paragraphs of the Complaint numbered "1" through "48" inclusive with the same force and effect as if fully set forth at length herein.

59. Etsy unlawfully discriminated against Plaintiff with respect to the terms and conditions of his employment because of his age and gender. By reason thereof, Etsy violated the NYCHRL.



60. As a direct and proximate result of Etsy's unlawful discriminatory practices as described herein, Plaintiff was humiliated and embarrassed within the work atmosphere, which was brought about by virtue of Etsy's systematic and continuous unlawful harassment and multiple discriminatory practices and acts.

61. As a direct and proximate result of Etsy's discriminatory practices, Plaintiff has also sustained significant economic damages.

**AS AND FOR A FOURTH COUNT**

62. Plaintiff repeats and realleges each and every allegation contained in paragraphs of the Complaint numbered "1" through "48" inclusive with the same force and effect as if fully set forth at length herein.

63. Etsy unlawfully discriminated against Plaintiff with respect to the terms and conditions of his employment because of his age and gender. By reason thereof, Etsy has violated the NYSHRL.

64. As a direct and proximate result of Etsy's unlawful discriminatory practices as described herein, Plaintiff was humiliated and embarrassed within the work atmosphere, which was brought about by virtue of Etsy's systematic and continuous unlawful harassment and multiple discriminatory practices and acts.

65. As a direct and proximate result of Etsy's discriminatory practices, Plaintiff has also sustained significant economic damages.

**AS AND FOR A FIFTH COUNT**

66. Plaintiff repeats and realleges each and every allegation contained in paragraphs of the Complaint numbered "1" through "48" inclusive with the same force and effect as if fully set forth at length herein.

67. Etsy retaliated against Plaintiff in violation of the ADEA.

68. As a direct and proximate result of Etsy's unlawful retaliation as described above, Plaintiff was humiliated and embarrassed within the work atmosphere and suffers from physical manifestations of said humiliation and embarrassment, which were brought about by virtue of Etsy's systematic and continuous unlawful harassment and multiple retaliatory practices.

69. As a direct and proximate result of Etsy's retaliatory practices, Plaintiff has also sustained significant economic damages.

**AS AND FOR A SIXTH COUNT**

70. Plaintiff repeats and realleges each and every allegation contained in paragraphs of the Complaint numbered "1" through "48" inclusive with the same force and effect as if fully set forth at length herein.

71. Etsy retaliated against Plaintiff in violation of Title VII.

72. As a direct and proximate result of Etsy's unlawful retaliation as described above, Plaintiff was humiliated and embarrassed within the work atmosphere and suffers from physical manifestations, of said humiliation and embarrassment, which were brought about by virtue of Etsy's systematic and continuous unlawful harassment and multiple retaliatory practices.

73. As a direct and proximate result of Etsy's retaliatory practices, Plaintiff has also sustained significant economic damages.

**AS AND FOR A SEVENTH COUNT**

74. Plaintiff repeats and realleges each and every allegation contained in paragraphs of the Complaint numbered "1" through "48" inclusive with the same force and effect as if fully set forth at length herein.

75. Etsy retaliated against Plaintiff in violation of the NYCHRL.

76. As a direct and proximate result of Etsy's unlawful retaliation as described above, Plaintiff was humiliated and embarrassed within the work atmosphere and suffers from physical manifestations of said humiliation and embarrassment, which were brought about by virtue of Etsy's systematic and continuous unlawful harassment and multiple retaliatory practices.

77. As a direct and proximate result of Etsy's retaliatory practices, Plaintiff has also sustained significant economic damages.

**AS AND FOR AN EIGHTH COUNT**

78. Plaintiff repeats and realleges each and every allegation contained in paragraphs of the Amended Complaint numbered "1" through "48" inclusive with the same force and effect as if fully set forth at length herein.

79. Etsy retaliated against Plaintiff in violation of the NYSHRL.

80. As a direct and proximate result of Etsy's unlawful retaliation as described above, Plaintiff was humiliated and embarrassed within the work atmosphere and suffers from physical manifestations, of said humiliation and embarrassment, which were brought about by virtue of Etsy's systematic and continuous unlawful harassment and multiple retaliatory practices.

81. As a direct and proximate result Etsy's retaliatory practices, Plaintiff has also sustained significant economic damages.

**WHEREFORE,** Plaintiff demands the following relief:

- a) a money judgment against Defendant for his damages, including but not limited to lost wages, liquidated damages, lost benefits, other economic damages, shame, humiliation, embarrassment, and mental distress;
- b) reinstatement or in the alternative front pay;
- c) an award of punitive damages and attorneys' fees;

- e) prejudgment interest and costs; and
- f) such further and additional relief as the Court deems just and appropriate under the circumstances.

COREY STARK PLLC



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By: Corey Stark (CS-3897)  
*Attorneys for Plaintiff*  
110 East 59<sup>th</sup> Street, 22<sup>nd</sup> Floor  
New York, New York 10022  
(212) 324-3705



**JURY DEMAND**

Plaintiff demands a trial by jury in this action.

Dated: New York, New York  
June 16, 2016

COREY STARK PLLC

A handwritten signature in black ink, appearing to read 'Corey Stark', is written over a horizontal line.

By: Corey Stark (CS-3897)

*Attorneys for Plaintiff*

110 East 59<sup>th</sup> Street, 22<sup>nd</sup> Floor

New York, New York 10022

(212) 324-3705